

**COURT OF APPEALS
DECISION
DATED AND FILED**

June 27, 2013

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2012AP2162

Cir. Ct. No. 2010CM1754

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

**IN THE MATTER OF THE RETURN OF PROPERTY: STATE OF WISCONSIN V.
BRIAN KIALE LITTLE:**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

BRIAN KIALE LITTLE,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Rock County:
JAMES P. DALEY, Judge. *Affirmed.*

¶1 HIGGINBOTHAM, J.¹ Brian Kiale Little appeals an order of the circuit court denying his motion for the return of his handgun and ammunition. We conclude that Little has forfeited the arguments he raises on appeal because he did not raise them in the circuit court, and that he has abandoned the argument he raised in the circuit court because he does not raise that issue on appeal. Accordingly, we affirm.

BACKGROUND

¶2 The State charged Little with carrying a concealed weapon, contrary to WIS. STAT. § 941.23. Little entered a no-contest plea to the crime and a judgment of conviction was entered accordingly. Approximately one year later, Little filed a motion for the return of his handgun and ammunition, pursuant to WIS. STAT. § 968.20. The court denied the motion under WIS. STAT. § 968.20(1m)(b).² The court explained that, under § 968.20(1m)(b), dangerous weapons and ammunition may not be returned “to any person who committed a

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (2011-12). All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

² WISCONSIN STAT. § 968.20(1)-(1m)(b) provides in relevant part:

(1) Any person claiming the right to possession of property seized ... may apply for its return to the circuit court for the county in which the property was seized

(1m)

....

(b) If the seized property is a dangerous weapon or ammunition, the property shall not be returned to any person who committed a crime involving the use of the dangerous weapon or the ammunition....

crime involving the use of the dangerous weapon or the ammunition,” and Little used a dangerous weapon and ammunition to commit the crime of carrying a concealed weapon. Little appeals.

DISCUSSION

¶3 Little raises two arguments on appeal: (1) the circuit court had a duty to inform him at the initial court appearance of the minimum mandatory penalties for the crime of carrying a concealed weapon and the court failed to do so because the court did not inform him that he would be required to forfeit his handgun and ammunition under WIS. STAT. § 968.20(1m)(b); and (2) Little’s forfeiture of his handgun and ammunition “constitutes an *ex post facto* punishment” because forfeiture under § 968.20(1m)(b) “was not imposed until after Mr. Little entered a plea and was sentenced.”

¶4 We conclude that Little has forfeited his right to raise these arguments on appeal. In general, courts will not address “issues raised for the first time on appeal since the [circuit] court has had no opportunity to pass upon them.” *Hopper v. City of Madison*, 79 Wis. 2d 120, 137, 256 N.W.2d 139 (1977). Little did not raise either of the arguments he makes on appeal in the circuit court and provides no reason why we should address arguments not first raised in the circuit court. Because the circuit court had no opportunity to “pass upon” either of the arguments Little raises on appeal, we decline to address them.

¶5 The only argument that Little did raise in the circuit court was that the forfeiture of his handgun under WIS. STAT. § 968.20(1m)(b) constituted an excessive fine in violation of the Eighth Amendment to the United States Constitution. *See* U.S. CONST. art. VIII. Little’s counsel briefly argued to the circuit court that the forfeiture constituted an excessive fine because the cost of the

handgun “far exceeds the [\$100] fine levied in this case.” The court did not directly respond to this argument.

¶6 We conclude that Little has abandoned his excessive fines clause argument on appeal. *See A.O. Smith Corp. v. Allstate Ins. Cos.*, 222 Wis. 2d 475, 491, 588 N.W.2d 285 (Ct. App. 1998) (“[A]n issue raised in the [circuit] court, but not raised on appeal, is deemed abandoned.”) Little does not raise the issue in his brief-in-chief, and it is well established that “a party does not adequately raise an issue when it does not raise that issue in the brief-in-chief.” *Adler v. D&H Indus., Inc.*, 2005 WI App 43, ¶18, 279 Wis. 2d 472, 694 N.W.2d 480. Moreover, to the extent that Little notes in his reply brief that WIS. STAT. § 968.20(1m)(b) is subject to the excessive fines clause of the Eighth Amendment, he fails to argue that the forfeiture of his handgun is an excessive fine in violation of the Eighth Amendment. Because Little fails to address on appeal the only argument he raised in the circuit court, we decline to address that argument.

CONCLUSION

¶7 For the above reasons, we affirm the order of the circuit court.

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)4.

